Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNSDB-DR, FFT
For the landlord: MNRL-S, MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- an order for the landlord to return the security and pet damage deposits (the deposits), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the deposits, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Landlord PK (the landlord) and the tenant attended the hearing. The landlord was assisted by advocate JD. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00."

Preliminary Issue – Service of the Tenant's application

The notice of dispute resolution is dated October 07, 2021. The tenant served the notice of dispute resolution and the evidence via registered mail in October 2021. The landlord confirmed receipt of the tenant's package mailed on October 09, 2021 on November 01, 2021 containing only the tenant's notice of dispute resolution.

The notice of hearing is dated November 17, 2021. The tenant affirmed he served the notice of hearing and the interim decision via registered mail on November 24, 2021 to the landlord's address for service. The tracking number and the landlord's address are recorded on the cover page of this decision.

The landlord confirmed her address and stated that she did not receive the package mailed on November 24, 2021.

Based on the tenant's more convincing testimony and the tracking number, I find the tenant served the notice of dispute resolution, the evidence, the notice of hearing and the interim decision in accordance with section 89(1)(c) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the notice of hearing and the interim decision on November 29, 2021, in accordance with section 90 (a) of the Act.

Preliminary Issue – Service of the Landlord's application

The landlord served the notice of hearing and the evidence (the landlord's materials) via registered mail on March 24, 2022 to the tenant's address recorded on the tenant's notice of hearing dated October 07, 2021. The tenant confirmed receipt of the landlord's materials.

Based on the undisputed testimony, I find the landlord served the landlord's materials in accordance with section 89(1)(c) of the Act.

Preliminary Issue – Correction of the Landlord's Name and the rental unit's address

At the outset of the hearing the landlord corrected the spelling of her first name and both parties corrected the rental unit's address.

Pursuant to section 64(3)(a) of the Act, I have amended both applications.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to return the deposits?
2. an authorization to recover the filing fee?

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the deposits?
4. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's and tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on April 24, 2021 and ended on August 03, 2021. Monthly rent was $1,500.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of $750.00 and a pet damage deposit of $750.00. The tenancy agreement was submitted into evidence.

The landlord mailed to the tenant a cheque dated September 04, 2021 (submitted into evidence) in the amount of $164.00. The landlord retained the amount of $586.00 from the security deposit and the full amount of the pet damage deposit. The tenant received the September 04, 2021 cheque in October 2021.

The tenant did not authorize the landlord to retain the balance of the deposits.

The landlord submitted her application on March 16, 2022.

The tenant claimed double the balance of security deposit of $586.00 and double the pet deposit.

The tenant testified he served the forwarding address in person to the landlord by delivering a piece of paper on August 03, 2021. The landlord said she asked the tenant to provide his forwarding address, but he did not. The landlord submitted into evidence a tenant's notice of forwarding address (RTB form 47) dated October 09, 2021 and signed by the tenant.

The condition inspection report (the report), submitted into evidence by the landlord, was signed by the parties on April 24, 2021. It indicates the rental unit was in good condition when the tenancy started.

Both parties agreed they scheduled the move out inspection for August 03, 2021 at 3:30 P.M.

The landlord affirmed the tenant did not attend the move out inspection at the scheduled time and a cleaning person was in the rental unit. The landlord inspected the rental unit alone between 3:30 and 4:00 P.M. on August 03, 2021 and signed the move out report.

The tenant stated that his friend AB was cleaning the rental unit on August 03, 2021 at 3:30 P.M. and he arrived at 3:40 P.M. The tenant testified the landlord did not attend at the scheduled time.

The landlord claimed $193.55 *pro rata* unpaid rent from August 01 to 04, 2021, as the tenant did not pay this amount and only moved out on August 03, 2021 after 1:00 P.M. The tenant confirmed he did not pay rent from August 01 to 04, 2021.

The landlord claimed $361.28 for the unpaid electricity from July 01 to 31, 2021 and $42.91 from August 01 to 05, 2021, as the tenant did not pay these amounts and the landlord paid them. The landlord submitted the electricity bills into evidence. The tenant said he did not pay the amounts claimed by the landlord because the landlord paid them before the due date.

The landlord claimed $137.40, as the tenant changed the deadbolt of the front door. The landlord submitted a receipt in the amount of $89.25 for the locksmith and $48.15 for the new deadbolt. The tenant affirmed he changed the deadbolt 3 or 4 weeks before the end of the tenancy because the original key provided by the landlord was not working. The tenant stated he informed the landlord that he needed to change the deadbolt. The landlord testified the tenant did not inform her about changing the

deadbolt. Both parties agreed the landlord served a one month notice to end tenancy dated July 06, 2021.

The landlord claimed $486.93 for cleaning expenses, as the tenant did not clean the 2 bedroom, 1,300 square feet rental unit when the tenancy ended. The landlord said the tenant hired the cleaning service on August 03, 2021. The landlord affirmed the tenant left the invoice for the August 03, 2021 cleaning service in the amount of $258.41 on the rental unit's counter, the landlord contacted the cleaning company and they informed her that the tenant did not pay for the cleaning service. The landlord paid the amount of $258.41 and submitted the invoice into evidence. The tenant stated he paid for the August 03, 2021 cleaning service and he left the invoice on the counter for the landlord to see that he paid for the cleaning.

JD testified that he is a property manager and he showed the rental unit to potential new tenants. JD informed the landlord that after the August 03, 2021 cleaning service there were stains on the carpet. The landlord said that the stains on the carpet were caused by the tenant's dog. The landlord hired the same cleaning company and paid an extra $168.53 for the cleaning service on August 25, 2021 (invoice submitted into evidence). The landlord submitted into evidence a letter from the cleaner dated March 03, 2022:

> To Whom It May Concern:
> On Tuesday, August 3rd, 2021, carpets were cleaned in the above unit. Some areas had to be redone. The unit was not vacant. Main bedroom had large furniture and other items. Clothes were on the floor. Small bedroom had several large dog vomit stains. They did not come out.
> As per the landlord's request, On August 25th, 2021, I tried again to remove the dog vomit using harsher chemicals. All but 1 stain was removed. [landlord] paid me for August 3rd, 2021, invoice.

The tenant affirmed that maybe there was one spot on the rental unit's carpet caused by his dog.

The landlord stated that after the August 25, 2021 the rental unit was not clean to her standards. The landlord paid another cleaning person the amount of $60.00 for two hours of cleaning. The landlord submitted a receipt in the amount of $60.00 dated August 09, 2021. The landlord testified the third cleaning service further cleaned the hardwood floor, the oven, and the freezer. The tenant said the rental unit did not need extra cleaning.

The landlord claimed $17.91, as the tenant damaged the door glide of the shed. The landlord submitted a receipt into evidence. The tenant affirmed he did not damage the door glide of the shed and that the glide was already broken when the tenancy started. The tenant stated the move in inspection does not indicate the glide was broken when the tenancy started because he did not inspect the shed.

The landlord claimed $33.59, as the tenant damaged the toilet seat. The landlord submitted a receipt into evidence. The tenant testified he did not damage the toilet seat.

The landlord claimed $39.17, as the tenant removed a paint can that was stored in the rental unit when the tenancy started. The tenant said that there was no paint can stored in the rental unit. The landlord affirmed that she forgot to record on the move in inspection that there was a gallon of paint in the rental unit.

The landlord submitted a monetary order worksheet indicating a total claim in the amount of $1,312.75. The tenant submitted a worksheet indicating a claim for the return of the security deposit in the amount of $586.00 and the pet deposit of $750.00.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Move-out inspection

Section 35 of the Act states:

> (**1)The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit**
> **(a)on or after the day the tenant ceases to occupy the rental unit, or**
> **(b)on another mutually agreed day.**
> (2)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
> (3)The landlord must complete a condition inspection report in accordance with the regulations.
> (4)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
> (5)The landlord may make the inspection and complete and sign the report without the tenant if
> (a)the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
> (b)the tenant has abandoned the rental unit.
>
> (emphasis added)

I accepted the uncontested testimony that the parties agreed to conduct the move out inspection on August 03, 2021 at 3:30 P.M.

The landlord stated she was at the rental unit from 3:30 to 4:00 P.M. on August 03, 2021 and the tenant testified he was at the rental unit at 3:40 P.M. and the landlord was not there.

The parties offered conflicting testimony about the move out inspection. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances

related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The landlord did not provide any documentary evidence to support her claim that she attended the rental unit on the scheduled time for the move out inspection, August 03, 2021 at 3:30 P.M.

Section 36 of the Act states:

> **(1)The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if**
> (a)the landlord complied with section 35 (2) [2 opportunities for inspection], and
> (b)the tenant has not participated on either occasion.
> (**2)Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord**
> (a)does not comply with section 35 (2) [2 opportunities for inspection],
> (b)having complied with section 35 (2), **does not participate on either occasion, or unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord**
> (c)having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
>
> (emphasis added)

RTB Policy Guideline 17 explains: “7. The right of a landlord to obtain the tenant’s consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.”

The landlord submitted an application for an authorization to retain the deposits. Per Rule of Procedure 6.6, the landlord has the onus to prove her case. I find the landlord failed to prove, on a balance of probabilities, that she attended the move out inspection on August 03, 2021 at 3:30 P.M. and that the tenant did not attend. Thus, the landlord extinguished her right to claim against the deposits, per section 36(2)(b) of the Act.

Furthermore, the report does not contain the landlord’s address for service, as required by regulation 20(1)(d): “A condition inspection report completed under section 23 or 35 of the Act must contain the following information: (d)the address for service of the landlord.”

Thus, I find the move out report did not comply with regulation 20(1)(d).

Regulation 21 provides:

> Evidentiary weight of a condition inspection report
> 21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary

I find the move out report has no evidentiary weight, as the landlord did not complete it in accordance with the regulations. Furthermore, the landlord failed to prove that she attended the rental unit at the agreed time for the move out inspection, per section 35(1) of the Act.

Forwarding address

The parties offered conflicting testimony about the service of the forwarding address in writing on August 03, 2021.

The tenant did not provide any documentary evidence to support his claim that he served the forwarding address in writing on August 03, 2021. The tenant did not call any witnesses.

Based on the tenant's notice of forwarding address submitted into evidence by the Landlord and the undisputed testimony indicating that the landlord mailed a cheque in the amount of $164.00 to the tenant in October 2021, I find the tenant served the forwarding address in writing on October 09, 2021.

Deposits

Section 38 of the Act states:

> (1)Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> (a)the date the tenancy ends, and
> (b)the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:
> (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.
> […]
> (6)If a landlord does not comply with subsection (1), the landlord

> (a)may not make a claim against the security deposit or any pet damage deposit, and
> (b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenancy ended on August 03, 2021 and the tenant provided the forwarding address in writing on October 09, 2021.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished her right to claim against the deposits and did not return the full amount of the deposits within the timeframe of section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposits retained.

RTB Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
> […]
> if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to double the deposits.

If the landlord had not extinguished her right to claim against the deposits, the landlord had to return the balance of the deposits within 15 days after the date the landlord received the forwarding address, per section 38(1) of the Act. As stated in the topic "forwarding address", the tenant served the forwarding address in writing on October 09, 2021. The landlord submitted her application on March 16, 2022, after the timeframe of section 38(1) of the Act.

RTB Policy Guideline 17 states:

> The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:
> Example A: A tenant paid $400 as a security deposit. At the end of the tenancy, the landlord held back $125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

> The arbitrator doubles the amount paid as a security deposit ($400 x 2 = $800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $525.00 ($800 - $275 = $525).

Thus, I find the tenant is entitled to $2,836.00 ($750 security deposit + $750.00 pet deposit = $1,500.00 x 2 = $3,000.00 subtracted $164.00 returned).

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposits.

Unpaid rent

I accept the uncontested testimony that both parties agreed to a tenancy and the tenant was obligated to pay monthly rent in the amount of $1,500.00 on the first day of the month.

Based on the undisputed testimony offered by both parties, I find the tenant did not pay rent due on August 01, 2021.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

I award the landlord *pro rata* August 2021 rent in the amount of $193.55.

Unpaid electricity

I accept the uncontested testimony that the tenant agreed to pay the electricity and did not pay the electricity bills from July 01 to 31, 2021 ($361.28) and from August 01 to 05, 2021 ($42.91).

Based on the uncontested testimony of both parties and the electricity bills, I find, on a balance of probabilities, that the tenant breached the tenancy agreement by not paying for the electricity and the landlord suffered a loss of $404.19.

I award the landlord compensation in the amount of $404.19 for the unpaid electricity.

Deadbolt replacement

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant".

Based on the uncontested testimony of both parties, I find the tenant replaced the deadbolt of the rental unit 3 or 4 weeks before the end of the tenancy, after the landlord served a one month notice to end tenancy for cause.

The tenant did not provide any documentary evidence to support his claim that he informed the landlord that the original deadbolt needed to be changed, as the original key was not working. The tenant did not call any witnesses

Based on the landlord's convincing testimony, the new deadbolt receipt and the locksmith receipt, I find the landlord proved the tenant failed to comply with section 32(2) of the Act by not paying for the deadbolt replacement and the landlord suffered a loss of $137.40.

I award the landlord compensation in the amount of $137.40 for the deadbolt replacement.

Cleaning

Section 37(2) of the Act states:

> Leaving the rental unit at the end of a tenancy
> 37(2) When a tenant vacates a rental unit, the tenant must
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Residential Tenancy Branch Policy Guideline 1 states:

> The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the landlord's more convincing testimony, the March 03, 2022 letter and the testimony offered by JD, I find the tenant did not leave the rental unit reasonably clean when the tenancy ended and the landlord suffered a loss because of the tenant's breach of section 37(2) of the Act.

Based on the landlord's more convincing testimony, the March 03, 2022 letter and the August 03, 2021 invoice , I find the tenant did not pay for the cleaning service on August 03, 2021 and the landlord incurred a loss of $258.41 for the cleaning service on August 03, 2021.

Based on the landlord's more convincing testimony and the August 25, 2021 invoice, I find the tenant did not pay for the cleaning service on August 25, 2021 and the landlord incurred a loss of $168.53 for the cleaning service on August 25, 2021.

I find the landlord did not prove, on a balance of probabilities, that the rental unit needed further cleaning on August 09, 2021. The landlord did not submit photographs and the tenant denied that the unit needed further cleaning.

Thus, I award the landlord compensation for cleaning expenses in the amount of $426.94 for the cleaning services on August 03 and 25, 2021.

Door glide, toilet seat and paint can

The parties offered conflicting testimony regarding the damages to the door glide, the toilet seat and removing the paint can. The landlord did not provide any documentary evidence to support her claims that the tenant damaged the door glide and the toilet seat and removed the paint can. The landlord did not call any witnesses. I find the landlord failed to prove, on a balance of probabilities, that the tenant breached the Act.

I dismiss the landlord's claims for compensation for the door glide, the toilet seat and the paint can.

Filing fees and summary

As both parties were successful with their applications, each party will bear their own filing fee.

The tenant is awarded 2,836.00. The landlord is awarded:

Expenses	**$**
Unpaid Rent	193.55
Unpaid Electricity	404.19
Deadbolt replacement	137.40
Cleaning	426.94
Total	**1,162.08**

Set off

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set off when there are two monetary awards:

> 1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

Thus, the tenant is awarded $1,673.92.

Conclusion

Pursuant to section 38 of the Act, I grant the tenant a monetary order in the amount of $1,673.92.

The tenants is provided with this order in the above terms and the landlord must be served with this order. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 21, 2022

Residential Tenancy Branch